

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

**PENNY LEE POWELL,**

Plaintiff,

v.

**CAROLYN W. COLVIN,**

Acting Commissioner of Social Security,

Defendant.

**Civ. No. 6:13-cv-01857-MC**

**OPINION AND ORDER**

**MCSHANE, Judge:**

Plaintiff Penny Lee Powell brings this action for judicial review of a final decision of the Commissioner of Social Security denying her application for social security disability benefits under Titles II and XVI of the Social Security Act. Defendant filed this motion to dismiss, ECF No. 8, contending that this Court lacks subject matter jurisdiction because plaintiff did not exhaust her administrative remedies, i.e., file an appeal to the Appeals Council. *See, e.g., Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 n. 1 (9th Cir. 2004) (“Where, as here the Appeals Council denies a request for review . . . the decision of the ALJ represents the final decision of the Commissioner.” (citation omitted)).

This Court, having considered defendant’s motion, ECF No. 8, finds that it lacks subject matter jurisdiction over plaintiff’s complaint. *See, e.g.,* 20 C.F.R. § 404.981 (indicating that a plaintiff “may file an action in a Federal district court within 60 days after . . . receiv[ing] notice of the Appeals Council’s action.”). Plaintiff failed to exhaust her administrative remedies

because she did not complete the administrative review process. *See, e.g.*, 20 C.F.R. § 404.900; 20 C.F.R. § 416.1400. Accordingly, defendant's motion to dismiss, ECF No. 8, is GRANTED.

IT IS SO ORDERED.

DATED this 2nd day of June, 2014.

s/Michael J. McShane

**Michael J. McShane**  
**United States District Judge**